IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 86 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JASHIBEN WD/O RASIKBHAI BABUBHAI & 3 ORS

Versus

BHIKHBHAI SOMABHAI RANA

Appearance:

1. First Appeal No. 86 of 1985
MR RAJNI H MEHTA for Petitioner No. 1
MR MD PANDYA for Respondent No. 1-2

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE D.A.MEHTA

Date of decision: 20/02/2003

CAV JUDGEMENT

(Per : MR.JUSTICE N.G.NANDI)

1. This appeal under section 110 (D) of the Motor Vehicles Act (herein after as "the Act") is preferred by the original claimants, claiming enhancement in the compensation awarded by the M.A.C.. Tribunal, Nadiad vide judgment & award dated 25-2-1983, partly allowing the claim petition awarding amount of Rs.43,000/- by way of compensation on account of the accidental death of the victim.

2. The claimants - dependants of deceased Rasikbhai Babubhai claimed Rs.1,30,000/- by way of compensation stating that, Rasikbhai Babubhai, husband of the original claimant No.1 Jashiben, Babubhai Dolabhai- claimant No.2, Revaben Babubhai, and Laxmanbhai Babubhai - original claimant No.3 & 4; was doing the business and earning Rs.1000/- per month. On the date of accident, i.e. on 17-6-1981 at about 8.00 p.m. Rasikbhai was going on his bicycle in the precinct of village Mahudha on Dakor-Mahudha road, and at that time the driver of the ST Bus bearing No. GTE-5344 came in a rash and negligent manner and dashed with the cycle of Rasikbhai and knocked him down. Rasikbhai was run over by wheels of said ST bus and sustained injuries, to which he later on succumbed.

Opponent No.1- driver of the offending ST bus belonging to opponent No.2 Gujarat State Road Transport Corporation filed written statement refuting averments in the petition made against the opponents, inter alia contending that the accident was the result of the sole negligence on the part of the deceased himself, as the deceased on his bicycle followed the bus and dashed into rear portion of the bus as he could not control his cycle. G.S.R.T. Corporation has adopted the written statement filed by opponent No.1.

3. Appreciating the oral as well as documentary evidence adduced, the Claims Tribunal partly allowed the claim petition and awarded compensation of Rs.43,000/-. It is this award granting compensation of Rs.43,000/which is assailed by the original claimants claiming enhancement in the compensation awarded by the Claims Tribunal.

4. It is submitted by Mr. S.B. Parikh, learned advocate for the appellants that the compensation awarded by the Claims Tribunal is grossly inadequate in as much as the deceased was a young man of 27 years and he had

business of Pangalla and tea larry/ tea stall vending in ready tea and also had the business of bicycles giving on hire and repairing. It is further contended that the prospective income of the deceased and for that matter loss of future dependency benefit has not been considered by the Tribunal. As against this, it is submitted by Mr. M.D.Pandya, learned senior counsel for the respondents that, there is no evidence of income from pangalla as well as tea larry vending in ready tea. It is further contended that, as far as the business of giving cycles on hire and repairing is concerned, that is the business of father of the deceased and that 18 bicycles in police auction have been purchased by the father of the deceased for a consideration of Rs.3651/- as disclosed from the evidence, and that, the deceased cannot be said to be in any manner connected with the business of bicycle. It is further stated that, there is no evidence as to what the deceased would have earned from the business of pangalla as well as vending ready tea at hand larry in future, and that, in future the responsibility of the deceased also would have increased, and looking to the reasonable uncertainty of life the compensation awarded by the Tribunal does not call for any interference.

5. The Tribunal holding respondent No.1 driver of the offending ST bus No. GTE-5344 sole negligent in the occurrence of the accident at about 8.00 p.m. on 17-6-1981 in the precincts of village Mahudha on Dakore-Mahudha road wherein an young person full of promise lost his life, awarded compensation of only Rs.43,000/-.

6. We have perused the R & P of the trial Court. Since the appeal is filed by the claimants for enhancement in the compensation awarded by the Claims Tribunal, confining ourselves to the scope of the present appeal, we find from the deposition of claimant Babubhai, father of the deceased at exhibit-21 that the deceased left behind widow aged 20 years, old parents - claimants No.2 & 3 and younger brother - claimant no.4. It is also suggested from exhibit-21 as regards income of the deceased that the deceased was running business of pangalla and was also catering ready tea to the customers with the help of hand-larry. It is also stated by witness (exh.21) that witness had business of bicycles and the bicycles were given on hire. It is also stated that he had purchased 18 bicycles from Mahudha police station in consideration of Rs.3651/- before two years. The claimants have also examined witness Somabhai Motibhai (exh. 24) who has deposed that deceased was giving bicycles on hire and was running pan corner and

was also selling ready tea with the aid of hand-larry. Witness exh. 21 stated that Dahyabhai Babubhai, brother of the deceased soon after the accident lodged FIR exhibit-31. It is suggested from exhibit-31 that even at the time of accident Dahyabhai was sitting on the pan center. In the evidence exhibit-21 Babubhai has stated that, after the death of the deceased pangalla business is now taken over by Jayantibhai and his youngest son Laxmanbhai is selling ready tea with the aid of another hand-larry. This would go to show that all the brothers were living together and were also doing business of pangalla and selling ready tea collectively. It is also suggested from the evidence exh-21 that neither Jayantibhai nor Laxmanbhai attend to the business of cycle after the death of the deceased and that Jayantibhai and Laxmanbhai are giving him 1/2 of the profit of the profit of the business. It is also suggested from deposition Exh.21 that, Babubhai- father of the deceased is doing business of selling milk and he gets about Rs.500/- to 1000/- per month as his income. It is suggested from exh.22 the registration certificate of the business establishment that deceased was running pangalla business since year 1979 in the name of 'Santosh Pan Centre'. Exh.22 only refers to the business of 'Pan-Bidi' and the said establishment has been registered with the local authorities on 28-6-1979. Exh. 22 thus suggests that the business of pan bidi in the name of Santosh Pan Centre was running only from June 1979. As seen above the evidence on record suggests that the business of bicycle on hire was with the purchase of 18 bicycles by witness exh.21 for Rs.3651/- in police auction whereas the deceased along with his brother and witness exh.21 must be doing the business of selling ready tea, as well as of bicycle on hire & repairing.

7. Considering the above evidence the Tribunal has evaluated the income of the deceased at the time of incident at Rs.300/- and taking Rs.100/- as the amount would have spent on him, loss of income or dependency benefit has been estimated at Rs.200/- per month. It cannot be denied that the income of the deceased would have increased by passage of time, also with the increase in the liability of the deceased. The deceased was a self-employed person. The income would not remain static and would increase by passage of time.

8. The Claims Tribunal has not considered the prospective / future income of the deceased while estimating the prospective income and loss of dependency benefit. It is true and as rightly disputed by Mr. Pandya that there is no evidence to suggest what the

deceased would have earned in future from time to time. In absence of definite evidence indicating as to what the deceased would have earned in future, we are of the view that the method of computing income by adding twice the amount to the income evaluated on the date of accident, divided by 1/2 deducting 1/3rd as personal expenses, would suggest the future loss of dependency benefit. Looking to the evidence on record the income of the deceased at the time of accident assessed at Rs. 300/per month is just and proper and the same does not call for any interference. Taking income of the deceased at Rs.300/- per month, doubling the same, i.e. Rs.600/- + Rs.300 = 900 divided by 1/2 = 450, less 1/3rd, i.e. Rs.300. Rs.300 x 12 = Rs.3,600/- x 15 = 54,000/-

Computing the prospective income of the deceased for the purpose of determining loss of dependency benefit, in our opinion, the future economic loss or dependency benefit would come to Rs.54,000/- instead of Rs.36,000/-.

9. The multiplier, adopted by the Tribunal looking to the age of the deceased is 15 years purchase factor. In the appeal memo it has been stated that the proper multiplier would be 15 years purchase factor and the Tribunal should have adopted 15 years purchase factor, we see no reason to interfere with the multiplier of 15 years purchase factor adopted by the Tribunal. The Tribunal has also awarded Rs.2000/- by way of transportation charges and funeral expenses. In ground (8) the claimants contended that the Tribunal should have awarded Rs.5000/- as conventional amount and Rs. 2000/- towards transportation and funeral expenses. The Tribunal has awarded Rs.5000/- as conventional amount and Rs.2000/- by way of transportation and funeral expenses.

10. It has been submitted by Mr. Parikh, learned advocate for the appellants that the multiplier adopted is on a lower side since the deceased was aged 27 years on the date of accident. There is no evidence as regards age of the deceased at the time of accident. In the inquest report exh. 15 age of the deceased given is 30 years. The claimants have produced voters list exh.16 so as to suggest the age of the deceased to be 27 years. There is no evidence as to when this voters list exh.16 was prepared. There is no other evidence as regards age of the deceased at the time of the accident. There is also no evidence produced in the nature of birth registration as well as school certificate to suggest the age of the deceased. Hence we are not inclined to accept the age of deceased to be 27 years at the time of

accident. Looking to the state of evidence and perusal of the award, we are of the opinion that, the Tribunal has rightly found the age of the deceased to be 30 years at the time of accident.

11. As seen above the claimants would be entitled to Rs.54,000/- instead of Rs.36,000/- awarded by the Tribunal considering he future dependency benefit. Thus the claimants would be entitled in addition to Rs.36,000/- awarded by the Tribunal, an additional amount of Rs.18,000/- under this head.

12. The Tribunal has apportioned the amount awarded as suggested in para-14 of the award since the deceased has left a young widow. The enhanced amount of Rs.18,000/- which we are inclined to award as observed above would be also required to be apportioned between claimant No.1 on one hand and claimants No.2 to 4, i.e. parents and younger brother jointly. The additional / enhanced amount of Rs.18,000/shall be apportioned in the manner, i.e.Rs.8000/- to Claimant No.1 Jeshiben and Rs.10,000/- to Claimants No.2 to 4 jointly i.e. parents and younger brother collectively.

13. It, therefore, follows from the above that the appeal deserves to be partly allowed to the extent of enhancement in the compensation to the tune of Rs.18,000/- with 6 % interest from the date of application till the amount is deposited, and the said amount is apportioned in the manner pointed out above.

14. In the result, the appeal is partly allowed to the extent aforestated. Out of the additional enhanced amount of Rs.18,000/-; Rs.8,000/- would be paid to widow Jashiben- Claimant No.1 by an account payee cheque in her name, and the remaining amount of Rs.10000/- shall be paid to parents and younger brother of the deceased, i.e. claimants No. 2 to 4 collectively. The respondents shall deposit the additional / enhanced amount of Rs.18,000/- with 6 % from the date of application till the deposit, within two months from today. No order as to cost in appeal.

Dt: 20-2-2003 (N.G. Nandi, J)

(D.A. Mehta, J)

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